own transactions with the plaintiff, and I have no independent information as to the plaintiff's moneylending transactions with any other person. Having to choose between the conflicting versions of the plaintiff and the defendant, I unhesitatingly accept the evidence of the defendant. The defendant impressed me as a witness of truth. I am satisfied after hearing all that he said that it was agreed between him and the plaintiff that he should pay interest on the loans at the rate of sixty per centum per annum and that such interest was to be paid monthly in advance, and that such interest was in fact paid as he has sworn. His evidence is supported by the cheques which he gave the plaintiff each month, and by the evidence of Lee Song Kim (witness 2) who handed to the plaintiff his own cheque for the last payment of interest of $150. Much of the plaintiff's evidence was so preposterously untrue that I cannot rely on anything he says. I refer, in particular, to his evidence about his deposits with his employer's firm of which no accounts whatsoever were kept either by himself or his employer, Furthermore, there are several features of the case which militate against the version of the plaintiff. For instance, the issue of a fresh cheque each month, as to which the plaintiff gave no satisfactory explanation. He attempted to explain away the cheque of Lee Song Kim by saying that it was given by the defendant to his employers in payment of certain articles which he had brought, but it is to be observed that not a single question on those lines was at any time put in cross-examination either to the defendant or to Lee Song Kim who stated in the clearest terms that he gave that cheque to the plaintiff for the defendant as interest. I disbelieve the plaintiff who I am satisfied was not telling me the truth. I find as a fact that the plaintiff not only charged interest at the rate of sixty per centum per annum but that he received interest at that rate on the loans he made to the defendant.

Having found, as a fact, that the plaintiff did receive interest from the defendant, the next question is, is he a moneylender within the meaning of the Ordinance at the relevant times? It has been held that each case must be decided upon its own particular facts. It has furthermore been held that it is not sufficient to prove that the lender has occasionally lent money at a remunerative rate of interest; some degree of system and continuity in moneylending transactions must be proved (see *Edgelow v. MacElwee*[1]; *Litchfield v. Dreyfus*[2]; *Newton v. Pyke*[3], referred to in *Esmail Sahib v. Noordin*[4]). In this case the only evidence before me, as I have said, is of the defendant's transactions with the plaintiff. There can be no doubt, as I have found, that the plaintiff in his transactions with the defendant charged an extremely high rate of interest indeed. Under section 3 of either Ordinance the onus, therefore, shifts to the plaintiff to prove that he is not a moneylender. There were four separate loans to the defendant, three of them for substantial sums, and I have not lost sight of the fact that when someone was required to lend the defendant money — a sum of $2,000 — to pay off the loan to Leong Yip Kow, it was the plaintiff who was brought in by a man who was employing him as a watchman at a salary of $80 a month. This, in my view, shows that the plaintiff was known to some people in that neighbourhood, certainly by his employer, as a man both willing and able to lend money, and not trifling sum, at interest. Furthermore, I am satisfied on the evidence that the plaintiff's moneylending transactions had system and continuity. The plaintiff has not attempted to explain his insistence on receiving a fresh cheque on each occasion interest was paid. Furthermore, having regard to the difference in their station in life, to tell me that he lent these large sums of money to the defendant as a "friend" is to tell me something I do not believe. Upon these impressions made upon me by the evidence in this case I must hold that the plaintiff was *prima facie* a moneylender within the meaning of the Ordinances on the dates upon which he made the loans to the defendant and that he has not proved the contrary to my satisfaction.

That being my view, the plaintiff's claim fails.

There will be judgment for the defendant with costs. I direct that the cheque sued upon be returned to the defendant.

Judgment for the defendant.

Solicitor for the plaintiff: *S. Shunmugam.*

Solicitor for the defendant: *C. S. Jayaswal.*

MIN LIAN COMMUNICATION CO., LTD.
v.
C. H. HILL-WILLIS, HARBOUR MASTER, PERAK.

[O. C. J. (Thomson, J.) February 5, 1954]

[Ipoh — Civil Application No. 2 of 1954]

Merchant Shipping Ordinance, 1952, s. 475 — Construction of — Duty imposed on a Port Officer to license boats — His discretion and the limits imposed thereon.

The Port Officer, in this case the Harbour Master, Perak (respondent), had on December 23rd, 1953 written to the Company (petitioners) that, "on instructions received from the Perak State Executive Council he was

not permitted after December 31st, 1953 to renew the licences of the four motor boats or the Company to carry passengers between the port of Lumut and Pangkor Island."

The petitioners applied for an order under the provisions of Chapter VIII of the Specific Relief (Malay States) Ordinance, 1950 directing the Harbour Master to license the said boats.

Held: (1) section 475 of the Merchant Shipping Ordinance, 1952 imposes (inter alia) a duty on the Port Officer towards members of the public desirous of having boat licences for the carriage of passengers namely a discretion to license a boat for the carriage of passengers if he thinks it seaworthy and proper for the conveyance of passengers but places certain limits on the exercise of that discretion; (2) the Port Officer is required to license a boat provided it is seaworthy and proper for the conveyance of passengers and when exercising his discretion must not be influenced by any other consideration.

Cases referred to:—

(1) *Straits Steamship Co. Ltd. v. Owen* (1932) M.L.J. 167.

(2) *Krishnasamy & Ors. v. Butler Madden* (1947) M.L.J. 182.

(3) *Rex v. Metropolitan Police Commissioner, ex parte, Holloway* (1911) 2 K.B. 1131.

(4) *Rex v. Weymouth Corp., ex parte, Teletax Ltd.* (1947) 63 T.L.R. 291.

CIVIL APPLICATION.

William J. Huntsman for the petitioners.

I. Talog Davies (Federal Counsel) for the respondent.

Thomson, J. (delivering oral judgment) : — In deciding this case I do not wish to go an inch beyond what is necessary for that purpose. In particular, I do not wish anything I may say to be taken as in any way criticising or approving the action of the State Executive Council in concerning itself with the matter.

To my mind, the question mainly turns on the construction to be placed on section 475 of the Merchant Shipping Ordinance which it is to be observed comes from section 441 of the pre-war Straits Settlements Ordinance and not from anything in the pre-war Federated Malay States Ordinance. The relevant portion of the section reads :—

"Any person desirous of having a boat licence for the conveyance of passengers or cargo or for fishing shall apply to the Port Officer of the nearest port, who shall examine the boat, and, if he thinks it seaworthy and proper for the conveyance of passengers or cargo or fishing, may cause the boat to be licensed as a passenger or cargo or fishing boat, and grant a licence for the same."

There is no need for any show of authority to support the proposition that that section places a duty on the shoulders of the Port Officer towards members of the public desirous of having boat licences and, in the present case, the Port Officer in question is the Harbour Master for Perak. To my mind, the section then does two things. One of these is to give the Port Officer a discretion in the carrying out of his duty, and the second is to place certain limits upon exercise of that discretion.

Reading the section in its ordinary grammatical sense it seems to me that that discretion is contained in the word "may" and that a limitation is imposed upon its exercise by the words "if he thinks it seaworthy and proper for the conveyance of passengers" or as the case may be.

On any ordinary canon of construction I do not think it enables the Port Officer to go beyond that limitation in the exercise of the discretion conferred upon him or to consider any matters other than seaworthiness and suitability, and it seems to me to follow that once having exercised his discretion in accordance with that limitation he comes under a duty to the particular member of the public in question to issue such licence as may be proper.

I do not propose to buttress that opinion by lengthy quotations from authority. I will only say I have considered the Straits Settlements case of the *Straits Steamship Co. Ltd. v. Owen*[1], the local case of *Krishnasamy & Ors. v. Butler Madden*[2] and the English case of *Rex v. Metropolitan Police Commissioner, ex parte, Holloway*[3] both in itself and is to be distinguished from the case of *Rex v. Weymouth Corporation ex parte Teletax Ltd.*[4].

I have not overlooked Mr. Talog Davies' argument to the contrary based on the wording of section 482 which, considered in isolation, would appear to give the Port Officer an unbounded discretion to cancel any boat licence once issued, and so, it is argued, to support the contention that his discretion to issue is equally unbounded. But the two sections (i.e. 475 and 482) are not to be read one in isolation from the other. They are to be read together. And reading them together, there are only two possible constructions to be placed upon section 482. One is that it is a natural corollary in the public interest to section 475 and that the discretion contained in it is not unbounded but is to be exercised on the same principles as the discretion conferred by section 475. The second is that section 482 is capable of being completely nugatory to section 475. And it seems to me that I cannot hesitate for one moment between these two constructions. Every canon of construction I know compels me to adopt the former.

The Port Officer then must not be influenced in the exercise of his discretion by any consideration other

than the seaworthiness or otherwise of the vessel in question, and its propriety or otherwise for the purpose for which a licence is sought, that is to say, for the conveyance of passengers or cargo as the case may be.

Here, whatever construction be placed upon the Port Officer's letter to the Applicant Company dated 23rd December it is clear that the Port Officer was in fact influenced to exercise his discretion in the way of refusing rather than granting a licence by some other consideration, and it is immaterial, for the purpose of the present proceedings, whether that consideration was some sort of instruction he had received from the Perak State Executive Council, or whether it was some sort of consideration relating to the amount of traffic that was desirable in the Dindings estuary, or whether, as was suggested, it was a desire to obviate feelings of unfriendliness among parties engaged in water transport.

That being so, the Applicant is entitled to ask the Court in one way or another to intervene.

The ordinary course for me to pursue would be to make an order *nisi* returnable at some future date.

In the circumstances of the present case, however, I fail to see that any useful purpose would be served by taking such a course.

The relevant facts in the Applicant's affidavit are not, I gather, disputed, and I see no reason why I should not draw the inference from these facts that the boats in question have been examined by the Port Officer and that he has thought they are seaworthy and proper for the conveyance of passengers. That he thinks them to be seaworthy, I think, follow from their having in fact been licensed during the year 1953 and from the fact that he is prepared to license them as cargo boats in 1954. That he thinks them proper for the conveyance of passengers, I think, follows from the fact that they were licensed for the conveyance of passengers up till the end of December. The unavoidable corollary is that he is under a duty to issue the licences asked for and it is this he has refused to do.

In the circumstances there will be an absolute order.

I will make an order that the respondent do cause boats in question to be licensed as passenger boats for the year 1954 subject to such conditions as he may see fit to impose under section 475(3) of the Merchant Shipping Ordinance and do issue the necessary licences forthwith.

(*Note*:—His Lordship then refused an application on the part of the respondent for a stay of execution and ordered that judgment be entered against the respondent for the taxed costs of the proceedings.)

Order accordingly

Solicitors for the petitioners: *Maxwell, Kenion, Cowdy & Jones.*

PUBLIC PROSECUTOR v. THUM SOO CHYE.

[A. Cr. J. (Buhagiar, J.) February 12, 1954]

[Ipoh — Criminal Appeal No. 1 of 1954]

Evidence Ordinance, 1950, ss. 24 & 80 — Confession — Admissibility of confession — Criminal Procedure Code (Cap. 6), s. 115(iii).

In this case at the trial the learned President had ruled that the alleged confession made by the appellant to a Magistrate was inadmissible in evidence. The Public Prosecutor appealed on the following grounds: (a) that the learned President was in error in holding that the statement was not duly made to the Magistrate under section 115 of the Criminal Procedure Code; (b) that the learned President was in error in holding that the presumptions under section 80 of the Evidence Ordinance did not apply to this case and (c) that the learned President should have held that the alleged irregularity in conforming to section 115(iii) of the Criminal Procedure Code was not a ground for excluding the statement in view of section 420 of the Criminal Procedure Code.

Held: (1) on the facts of the case the statement was made in accordance with law, and the learned President was wrong in holding that the presumptions under section 80 of the Evidence Ordinance 1950 did not apply; (2) section 80 of the Evidence Ordinance only raises a presumption that the confession was duly taken and does not raise any presumption of the voluntary nature of the confession; (3) notwithstanding that the recording Magistrate has certified that the confession was voluntarily made it is incumbent on the Court when the spontaneity and voluntary nature of the confession is impugned to inquire into the nature of the confession and see whether it was voluntary or not; the Court is not bound by the opinion of the recording Magistrate and if upon the evidence before the Court the confession appears to have been caused by inducement it would be inadmissible.

CRIMINAL APPEAL from Sessions Court.

I. Talog Davies (Federal Counsel) for the appellant.

Eusoffe Abdoolcader for the respondent.

Cur. Adv. Vult.

The facts and arguments appear sufficiently from the judgment.

Buhagiar, J.: —This is an appeal by the Public Prosecutor against the decision of the learned President of the Sessions Court acquitting and discharging the respondent on two charges for offences under section 62 of the Post Office Ordinance, 1947 (No. 34 of 1947).